

1 [Approval of Surface Mining Permit 30 Sunol Valley Quarry Lease]

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3 **Resolution authorizing the General Manager of the Public Utilities Commission to enter**
4 **into a quarry lease for a 308.5 acre parcel located in unincorporated Alameda County in**
5 **the Sunol Valley with Oliver de Silva, Inc., as tenant, through June 1, 2021, pursuant to**
6 **San Francisco Charter Section 9.118, with rights to extend the term for two years to**
7 **complete reclamation and with potential expansion and extension rights subject to**
8 **further environmental review and regulatory approvals.**

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10 WHEREAS, The City and County of San Francisco (the “City”) owns watershed
11 property in the Sunol Valley in unincorporated Alameda County that is held under the
12 jurisdiction of the San Francisco Public Utilities Commission (“SFPUC”), portions of which are
13 leased to private operators for sand and gravel quarrying operations; and

14 WHEREAS, The Sunol Valley watershed lands include a 308.5 acre parcel (the “Sunol
15 Valley Site”) which has been mined since the 1960s and currently is being mined pursuant to
16 an existing month-to-month tenancy under Surface Mining Permit number 30 (“Surface Mining
17 Permit 30”) issued by Alameda County after completion of environmental review and in
18 accordance with the provisions of the State Surface Mining and Reclamation Act (Public
19 Resources Code section 2710) and the Alameda County Surface Mining Ordinance (Alameda
20 County General Code Chapter 6.80); and

21 WHEREAS, Pursuant to its current terms, Surface Mining Permit 30 is in effect until
22 June 1, 2021, or upon completion of reclamation, whichever occurs first; and

23 WHEREAS, In 1992, the SFPUC commenced a planning process for a watershed
24 management plan for watershed lands held under its jurisdiction in Alameda County, which

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1 included the development of a Sunol Valley Resources Management Plan and selection by
2 the SFPUC of a preferred alternative for the Sunol Valley Resources Management Plan; and

3 WHEREAS, On September 26, 2000, the SFPUC, after certification of a Final Program
4 Environmental Impact Report, adopted the final Alameda Watershed Management Plan (the
5 “Watershed Management Plan”) under Resolution No. 00-0229;

6 WHEREAS, The preferred alternative for the Sunol Valley Resources Management
7 Element of the Watershed Management Plan called for expanded mining at the Sunol Valley
8 Site in furtherance of reclaiming the site upon completion of mining and developing it as a
9 water storage asset; and

10 WHEREAS, In December 2005 the SFPUC issued a Request For Proposals (the
11 “RFP”) for the lease and operation of the Sunol Valley Site and an exclusive right to negotiate
12 for future mining expansion as set forth under the preferred alternative of the Sunol Valley
13 Resources Management Element of the Watershed Management Plan; and

14 WHEREAS, On March 22, 2007, a RFP Review Panel comprised of staff from the
15 SFPUC, San Francisco Department of Real Estate, and the Port of San Francisco selected
16 Oliver de Silva, Inc. (“Tenant”) as the highest ranked respondent to the RFP; and

17 WHEREAS, On May 8, 2007, the SFPUC adopted its Resolution No. 07-0082,
18 authorizing the General Manager of the SFPUC (the "General Manager") to enter into
19 negotiations with Tenant for a lease of the Sunol Valley Site; and

20 WHEREAS, The SFPUC and Tenant have negotiated the terms of the proposed lease
21 (the “Lease”); and

22 WHEREAS, On June 9, 2009, the SFPUC, by its Resolution No. 09-0095 (the “SFPUC
23 Resolution”), approved the Lease and authorized the General Manager to submit the Lease
24 for consideration by the Board of Supervisors under Charter Section 9.118; and

25 WHEREAS, The Lease provides that upon its effective date Tenant shall promptly

1 apply to Alameda County for, and diligently pursue, the transfer of the existing Surface Mining
2 Permit 30 from the existing operator to Tenant, with no change proposed in the existing permit
3 or the activities authorized thereunder in connection with the transfer; and

4 WHEREAS, Upon the transfer of Surface Mining Permit 30, Tenant shall have the right
5 to harvest sand and gravel from the Sunol Valley Site to the 140-foot depth permitted under
6 such permit, subject to the terms and conditions of such permit, through the permit's current
7 expiration date of June 1, 2021, or the date the Sunol Valley Site is finally reclaimed,
8 whichever comes first; and

9 WHEREAS, As set forth in a letter from the SFPUC Bureau of Environmental
10 Management, dated June 1, 2009 (the "BEM Letter"), no change is proposed to Surface
11 Mining Permit 30 as reviewed and approved by Alameda County and, therefore, unless and
12 until any expansion of the mining operation as contemplated under the Lease is approved by
13 Alameda County and the City, there would be no change to the activities being undertaken at
14 the property which would require environmental review prior to approval of the Lease; and

15 WHEREAS, The Lease provides that within six months Tenant shall submit an
16 application to Alameda County for an amendment to Surface Mining Permit 30 to allow for
17 expansion of mining at the Sunol Valley Site as identified in the RFP, which includes the
18 incorporation of an adjacent 58 acre site owned by the City, consistent with the preferred
19 alternative set forth in the Sunol Valley Resources Management Element of the Watershed
20 Management Plan; and

21 WHEREAS, The proposed revision of Surface Mining Permit 30 shall be subject to all
22 required regulatory and environmental review, and the City retains discretion to participate in
23 the process as a responsible agency and to approve any proposed extensions or revisions to
24 Surface Mining Permit 30 (the "City's Retained Discretion"), all as more fully described in the
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1 Lease and the staff report prepared in connection with this transaction (the “Staff Report”);
2 and

3 WHEREAS, If such initial proposed revision of Surface Mining Permit 30 is approved
4 consistent with the provisions of the Lease, then the Lease term would be extended through
5 the expiration of the newly revised Surface Mining Permit 30, which is anticipated to include a
6 term of thirty years from the date such revision is approved; and

7 WHEREAS, Tenant also holds a lease on certain ridgeline property in the vicinity of the
8 Sunol Valley Site (the “Apperson Ridge Site”) that is not owned by SFPUC but is the subject
9 of Surface Mining Permit number 17 issued by Alameda County (“Surface Mining Permit 17”);
10 and

11 WHEREAS, Surface Mining Permit 17 currently authorizes the construction and
12 operation of sand and gravel processing facilities, including primary and secondary crushing
13 plants, an asphalt plant, a concrete batch plant and associated industrial facilities at the
14 Apperson Ridge Site as well as an access road between Calaveras Road and the Apperson
15 Ridge Site to be used by trucks bringing materials to and from the Apperson Ridge Site; and

16 WHEREAS, Tenant has not yet commenced operations at the Apperson Ridge Site;
17 and

18 WHEREAS, Tenant’s response to the RFP included a proposal to pursue authorization
19 for and construct a conveyor system to allow materials from the Apperson Ridge Site to be
20 transported to the Sunol Valley Site for further stockpiling, processing and sale; and

21 WHEREAS, Such proposal is likely to have significant environmental benefits as
22 compared to the existing terms of the Surface Mining Permit 17, including the relocation of
23 much of the currently authorized industrial activity from the SFPUC’s San Antonio Reservoir
24 watershed to the Sunol Valley Site, which is likely to reduce the negative effects that such
25 activities would have on water quality in the SFPUC water system; and

1 WHEREAS, The Lease has been negotiated to incorporate possible future
2 implementation of the conveyor proposal following completion of required environmental
3 review and approval and procurement of all required permits, provided that City and Tenant
4 enter into a Lease amendment and other agreements governing the terms and conditions of
5 the installation and operation of the conveyor system and the stockpiling and processing of
6 material on the Sunol Valley Site or adjacent City lands (collectively, the “Conveyor and
7 Processing Agreements”); and

8 WHEREAS, Under the Lease, within one year of the effective date of the initial revision
9 to Surface Mining Permit 30 to expand mining at the Sunol Valley Site, Tenant shall apply for
10 revisions to Surface Mining Permit 17 and Surface Mining Permit 30 that would, if approved
11 by Alameda County and the City, authorize the operation of the two sites using the conveyor
12 system as described above; and

13 WHEREAS, Such revisions to Surface Mining Permit 17 and Surface Mining Permit 30,
14 respectively, shall be subject to all required regulatory and environmental review and the
15 City’s Retained Discretion, all as more fully described in the Lease and the Staff Report; and

16 WHEREAS, If such revisions of Surface Mining Permit 17 and Surface Mining Permit
17 30 are approved and City and Tenant enter into the Conveyor and Processing Agreements,
18 the Lease for the portion of the Sunol Valley Site required to stockpile, process and sell
19 materials from the Apperson Ridge Site would be extended through the expiration of the
20 newly revised Surface Mining Permit 17, which is not expected to be extended from its current
21 expiration date of December 31, 2064; and

22 WHEREAS, The Lease also includes provisions detailing how the Sunol Valley Site will
23 continue to be operated if any of the proposed permit revisions are not approved; and

24 WHEREAS, The Lease sets the mining royalties to be paid to the SFPUC for Sunol
25 Valley Site materials at 15% of the revenues realized from the sale of such materials, and the

1 processing royalty to be paid to the SFPUC for Apperson Ridge Site materials processed at
2 the Sunol Valley Site at 10.5% of the revenues realized from the sale of such materials; and

3 WHEREAS, The Lease sets base rents that are to be paid by Tenant irrespective of the
4 royalty amounts generated from operations, which base rents are subject to increase and
5 reduction based on royalty performance over time, all as more fully set forth in the Lease and
6 the Staff Report; and

7 WHEREAS, Tenant has pursued negotiations with interested environmental groups
8 regarding the most appropriate manner for Tenant to pursue expanded mining at the Sunol
9 Valley Site and to establish mining operations at the Apperson Ridge Site; and

10 WHEREAS, Such negotiations resulted in Tenant's agreement with the Alameda Creek
11 Alliance and the Center for Biological Diversity regarding two conservation plans, one with
12 respect to the Sunol Valley Site and the other with respect to the Apperson Ridge Site
13 (together, the "Conservation Plans"); and

14 WHEREAS, While the City is not a party to the Conservation Plans, SFPUC staff has
15 worked with Tenant and the other signatories to understand the relationship between the
16 activities called for under the Conservation Plans and other environmental measures planned
17 by the SFPUC in connection with the Lease and other SFPUC water system projects in the
18 vicinity; and

19 WHEREAS, As provided in the Lease, there will be further opportunity to discuss
20 environmental impacts, mitigation measures, stakeholder compensation and conservation
21 programming through the environmental and regulatory review processes with respect to the
22 expanded mining activities described above and these decisions would require SFPUC and
23 Board of Supervisors approval; and

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1 WHEREAS, SFPUC staff and Tenant have engaged Sunol Valley stakeholders in
2 ongoing discussions regarding the appropriate manner in which to proceed with the activities
3 contemplated under the Lease; and

4 WHEREAS, Based on the information provided by SFPUC staff, Tenant and other
5 stakeholder groups regarding the proposed conservation of environmental resources in the
6 area and based on the discretion retained by the SFPUC to review and consent to the
7 activities under the Lease, the SFPUC determined that the transaction contemplated by the
8 Lease is an appropriate and responsible approach to quarrying activities; and

9 WHEREAS, Copies of the SFPUC Resolution and the related agenda item, the
10 proposed Lease and its exhibits, the Staff Report, the BEM Letter and the Conservation Plans
11 are on file with the Clerk of the Board of Supervisors in File No. ____; and

12 WHEREAS, Charter Section 9.118(c) requires the Board of Supervisors approval of
13 leases having a term of ten or more years or anticipated revenues of one million dollars or
14 more; now, therefore, be it

15 RESOLVED, That the Board of Supervisors hereby approves the Lease, including all
16 exhibits, and authorizes the General Manager to execute the Lease in such final form as is
17 approved by the General Manager in consultation with the City Attorney; and be it

18 FURTHER RESOLVED, That the Board of Supervisors authorizes the General
19 Manager to enter into any additions, amendments or other modifications to the Lease
20 (including, without limitation, preparation and attachment of, or changes to, any or all of the
21 exhibits) that the General Manager, in consultation with the City Attorney, determines are in
22 the best interests of the City, do not materially decrease the benefits of the Lease to the City,
23 do not materially increase the obligations or liabilities of the City, do not authorize the
24 performance of any activities without pursuing all required regulatory and environmental
25 review and approvals, and are necessary or advisable to complete the transactions which the

1 Lease contemplates and effectuate the purpose and intent of this resolution, such
2 determination to be conclusively evidenced by the execution and delivery by the General
3 Manager of the Lease and any such additions, amendments, or other modifications to that
4 document; and be it

5 FURTHER RESOLVED, That the Board of Supervisors authorizes and urges the
6 General Manager and any other appropriate officers, agents or employees of the City to take
7 any and all steps (including, but not limited to, the execution and delivery of any and all
8 certificates, agreements, notices, consents and other instruments or documents), as they or
9 any of them deems necessary or appropriate, in consultation with the City Attorney, in order to
10 consummate the transaction under the Lease in accordance with this resolution, or to
11 otherwise effectuate the purpose and intent of this resolution, such determination to be
12 conclusively evidenced by the execution and delivery by any such person or persons of any
13 such documents; and be it

14 FURTHER RESOLVED, That the Board of Supervisors approves, confirms and ratifies
15 all prior actions taken by the officials, employees and agents of the City with respect to the
16 Lease.

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